How Triple Talaq Violates Fundamental Rights of Muslim Women

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ABSTRACT

Generally human rights are equated with more freedom and progress. However it becomes pertinent to note that conferring rights do not always result in emancipation. The major reason behind this exclusionary nature of human rights is the universal assumption on which it is based. The darker side of human rights most apparently manifests itself in case of women as they are caught at the intersection of community identity and the narrative of modernity. One such universalistic subject is the image of a thoroughly victimised Muslim women who is in need of protection through the liberal rights discourse. The current debate around triple talaq, centred on the Sharaya Bano and several batches of petitions as well as Supreme courts own suo moto PIL considers certain aspects of Islamic personal laws which amount to gender discrimination and hence violates the constitution misses the point of intersectionality. As per the liberal understanding of rights for empowerment of women we need to subordinate the category of religion and culture. However constitutional rights would remain a dead letter if we do not understand the manner in which identity politics unfolds especially in case of women. The whole triple talaq issue has become a battleground for the culture versus modernity debate. It is important to realize that women’s experiences cannot be understood in these reductive binaries as “she” is produced from the very power relations which subordinate them. In this paper the author deals with the question of triple talaq in the light of the recent petition filed in the Supreme Court for declaring such talaq invalid. The author argues that there is an already existing legal precedent established by the apex court with respect to triple talaq which should be followed instead of resorting to a confrontational approach which may become hegemonic to Muslim women themselves. The author shall advocate that taking cue from third wave feminism, the identity of Muslim women must be understood at the intersection of gender and religion.

Introduction:

Muslims, as a whole, form the largest minority in the secular set up of Indian democracy making up more than 13 percent of the country’s 1.2 billion population and Muslim women are a minority among minority being only 6.0 per cent of the total country's population. Talaq Talaq Talaq the 3 dreaded words if uttered by a husband in quick succession would, in less than a blink of an eye unilaterally bring to an end the marital life of a muslim women. However the quran does not prescribe this form of divorce at all.

Only one in 100 Muslim women are graduates, while an average of 37 percent of Indian women over all have had a tertiary education, it added. The study, which surveyed 4,710 Muslim married women across 10 Indian states found nearly 92 percent of respondents said a Muslim man should not be allowed to have another wife during the first marriage. The study has brought out a major injustice faced by Indian Muslim women through decades in the form of oral unilateral divorce or triple talaq.

The personal law in India is a law for people of different religion and applicable according to the religion of the person. For many decades Muslim women are fighting for gender equality in the Islamic law that govern right related to marriage, divorce and property rights. All-India Muslim Personal Law Board is, is one of the main influential body in Muslim community. There are lots of supports as well as criticism about this board. Many time this board rejected the proposal to change the Muslim personal law as they believe it will infringe the basic principles of Islam. Further, there are many male members domination in that particular board. Whereas Quran does not support a system that is only managed by the patriarchy system. Muslim women rights of marriage, divorce, inheritance has encouraged many Muslim women activists to fight for their rights. The controversial Islamic divorce practice of instant triple talaq (Talaq-e-Biddat) has been struck down as arbitrary and against the
The practice was against Article 14 of the Constitution, which guarantees the right to equality, the Supreme Court has ruled.

**About Triple Talaq:**

Under Sharia Law, or Islamic law, a husband can divorce his wife by saying the word “Talaq” three times. This procedure is known as triple talaq. Another name for this is oral talaq.

Ahsan, Hasan, and Talaq-e-Biddat (triple talaq) are the three types of divorce recognised by Islamic law; the first two are reversible, but the final one is not. It is most common among Muslim groups in India that adhere to the Hanafi School of Islamic Law.

Wives cannot use triple talaq to divorce their husbands under this law. In order to divorce her husband, a woman must file for a divorce under the Muslim Personal Law (Shariat) Application Act 1937. (This Act was passed to provide guidelines for Muslims in India about the application of Sharia, or Islamic personal law).

**The Muslim Women (Protection of Rights on Marriage) Bill, 2019**

After getting passed in both houses of Parliament, President has given assent to the triple talaq bill passed by Parliament, turning it into a law which makes the practice of instant divorce among Muslims a punishable offence. The Act will replace an ordinance promulgated on February 21 this year to the same effect.

**Background:**

**Shah Bano case (1985):** The Supreme Court ruled in her favour in 1985 under the maintenance of wives, children and parents” provision (Section 125) of the All India Criminal Code, which applied to all citizens irrespective of religion. Further, it recommended that a uniform civil code be set up.

**Facts about the case:**

Maintenance was only to be paid during the iddat period, which lasted three lunar months, or around ninety days, according to Muslim personal law.

Section 125 of the Criminal Procedure Code, which was applicable to all citizens, stipulated that the wife’s support would be supplied.

**Impact:** After this historic decision, nationwide discussions, meetings and agitations were held. The then government under pressure passed The Muslim Women’s (Right to protection on divorce) Act (MWA) in 1986, which made Section 125 of the Criminal Procedure Code inapplicable to Muslim women.

**Daniel Latifi case:** The Muslim Women’s Act (MWA) was contested on the grounds that it infringed both the Article 21 right to life and Articles 14 and 15 right to equality.

The Supreme Court upheld the law's constitutionality, harmonised it with section 125 of the CrPC, and ruled that a wife should get enough money during her iddat term to support her now and in the future. As a result, a divorced Muslim woman is legally entitled to maintenance for the rest of her life or until she remarries.

**Sarla Mudgal Case:** In this case, the question was whether a Hindu husband married under the Hindu law, by embracing Islam, can solemnise a second marriage. The court held that the Hindu marriage solemnized under Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act 1955. Conversion to Islam and marrying again, would not by itself dissolve the Hindu marriage under the act and thus, a second marriage solemnized after converting to Islam would be an offence under section 494 of the Indian Penal Code (IPC).

**Shayara Bano Case:** Shayara Bano, a 35-year-old woman, challenged the practice after getting divorced under the triple talaq custom. In 2017, the Supreme Court, in a landmark 3-2 verdict, had struck down instant triple talaq. Three of the five judges on the Constitution Bench had called the practise un-Islamic and “arbitrary” and disagreed with the view that triple talaq was an integral part of religious practice.

The ruling of SC is truly a watershed moment in women empowerment movement in India. The court has given progressive thoughts enshrined in the Constitution precedence over personal law in society.
for having a correct picture of the social scenario, we need to analyse the existing literature dealing with Muslim women and the question of their status

There are several ways one can look at the status of women in any society. During the last decade, if we take note the studies done on Indian Muslim women, we find that they relied more on prescriptive norms than on empirical facts and so generalisations have remained factually inadequate.

The book "Caste and Social stratification among the Muslims" 1973 written by Imtiaz Ahmad rightly opined that while we know something about the structural and organizational characteristics of specific Muslim groups, there is little sociological information on the social framework within which Muslim groups operate.

The book "Muslim Women in the changing perspective" 1992 written by S. M. Raza : Talat Ara Ashrafi, who was cited, also brought up a lack of sociological research on Indian Muslims. According to him, research done on Indian Muslims thus far has been lacking. He contends that the research done in such far on Indian Muslims by various academics from other fields of study have either been incomplete or narrowly focused or using a historical, non-sociological perspective.

Imtiaz Ahmed in his book "Caste and social stratification among the muslims" has highlighted that there is little sociological information on muslims in India. The same view has been expressed by S. Musi Raza in his book "Muslim women in the changing perspective" has highlighted that there is scarcity of sociological literature on muslim on Indian Muslim.

M. Indu Menon, “Status of Muslim Women in India” 1981, this book highlight that no systematic effort has been made so far to find out the factors behind the low status of Muslim women. She further argues that the theme of social status of Muslim women has comparatively been a neglected field of study in Indian sociology. Imtiaz Ahmad, along with some other scholars, has edited a series of books on social stratification, religion, rituals, kinship, marriage and trends of modernization among the Muslims in India. But even in these volumes, the social problems of Muslim women like divorce, separation, etc., are ignored. Siddiqui aptly holds the following view.

There have never been any critical studies on women in India that have seriously questioned the entire political system, which projects and upholds a particular framework of values in a society, the attempts to explain various social issues, including the status of women, and the underlying ideological theoretical assumptions.

Indu Menon in her book "Status of Muslim Women in India argues problems of Muslim women like divorce, separation are ignored.

Shibani Roy, "Status of Muslim Women in North India” 1979. This book highlight the data collected during the years 1970-72 from the two cities of Delhi and Lucknow, which are understood to have the Muslim way of life typical of North India.

Shibani Roy in her book "Status of Muslim Women in North India” has given the emphasis that Indian society is undergoing transformation because of various factors like modern secular education and social legislation.

Talat Ara Ashrafi, "Muslim Women in changing perspective", 1992 This book emphasises the need to research Muslim women living in cities. She has made an effort to determine how much Muslim families' views and appearance are influenced by their faith or traditions and how much by reason. Also, the writer has made an effort to learn the real sociocultural practises and behaviours of Muslims in cities, as well as the effects of instruction for Muslim women. She claims that the reasons Indian society is changing are several influences and elements, such as social law, contemporary secular education, etc.

S.H. Moinuddin, "Divorce and Muslim Women" 2000 According to him the present study is an exploration of the practice of divorce among the Muslim women in India, with particular reference to West Bengal. It examines the incidence of divorce and separation, the manner in which it takes place, the social and other causes due to which it persists, and the position of the divorced and separated Muslim women in society. The nature and extent of the problem has been analyzed in the light of the empirical evidences collected by carrying out
fieldwork in two gram panchayats of West Bengal. The study also looks into the socio-psychological problems of divorced and separated women. With its original data and fresh theoretical perspective, the book will interest social scientists and women activists alike.

S.H. Moinuddin who in his book "Divorce and Muslim Women" who has worked at West Bengal looks into socio-psychological problem of divorce and separated women.

Dr. Shabnam Khan in her thesis "Talaq : A sociological exposition "A sociological examination of talaq among Jaipur's Muslim women: 2015. Her research indicates that the image that emerges from it is a conventional structure of Muslim society, one that is controlled by strict socio-religious laws wherever It is believed that women play an inferior position to males. Their speciality is still domesticity. Their individual Laws, especially those pertaining to the system of mahr and property rights, aim to provide Muslim women a specific degree of safety. But in reality, it seems like they're all just paper tigers. They hardly ever or infrequently obtain their portion of the property and their mahr.

My research will be concentrated on the custom of Triple Talaq awaring muslim women in India and the factors which lead to divorce and the ill effect of triple talaq. If we see the 'Times of India' of 2 Aug. 2015, a survey shows find even today 90 percent of muslim women against the custom of triple talaq.

If we see the 'Hindustan Time's of 18 May, 2016 Afreen Rehman from Jaipur, Rajasthan had a rude shock. Her Husband had sent his decision to divorce her and sent Talaq through Speed Post. Shocked and angry, Afreen, 28, knocked at the door of the Supreme Court on May 18, seeking justice. Afreen is the second woman to challenge the 'Triple Talaq' at the apex court; before her, 25-year-old Saira Bano from Uttrakhand had gone to the top court, seeking justice on Talaq. Afreen rehman (in chair right) from Jaipur, Rajasthan had a rude shock. Her husband had sent his decision to divorce her and sent Talaq through Speed Post. The Triple Talaq issue is one of the most sensitive and controversial topic among Indian Muslims.

Muslim nations that forbid triple talaq include Pakistan, Turkey, Egypt, Iran, Libya, and Tunisia. The educated class of today has begun to challenge the practise in India, pointing to other Muslim nations as examples. There are no responses from Indian religious organisations regarding their inquiry, "Is Islam here different from the one followed elsewhere?" The Muslim Personal Law is long overdue. Board takes this matter seriously and acts sensibly to prevent confrontations with the Indian Court. Otherwise, additional Afreen Rehmans, Shah Banos, and Saira Banos will knock at the To seek justice, go to the Supreme Court.

What is there in the triple talaq bill?

Declaring talaq-e-bidat orally, in writing, by SMS, WhatsApp, or any other electronic conversation is prohibited by the triple talaq bill.

Talaq-e-biddat is the term used to describe when a Muslim man gives his wife the very final blow of divorce after saying talaq three times in one sitting.

The triple talaq bill also declares talaq-e-bidat to be a cognisable offence, enabling a police officer to make an arrest without a warrant.

In order to prevent the exploitation of the offense's cognisable character, the Triple Talaq Bill only declares talaq-biddat in cases when the victimised lady or any of her kin through marriage or blood files a complaint.

A Muslim man pronouncing instant triple talaq attracts a jail term of three years under the triple talaq bill. The accused under the triple talaq bill is entitled to bail, which can be granted by a magistrate. But the bail can be granted only after the magistrate has heard the aggrieved woman.

The triple talaq bill also provides scope for reconciliation without undergoing the process of nikah halala if the two sides agree to stop legal proceedings and settle the dispute.

Nikah halala is the term for the custom that requires a Muslim woman who has been divorced to remarry, complete her union, then file for divorce. She won't be able to remarry her ex-husband till then.
Under the triple talaq bill, the divorced Muslim woman is entitled to seek custody of minor children. This would be determined by a magistrate.

A woman divorced through talaq-e-biddat is entitled to demand maintenance for her and her dependent children under the triple talaq bill. The magistrate has the power to determine the amount of subsistence allowance.

Arguments in favour of banning triple talaq:

It is commonly known that making anything illegal has no deterrent impact on its use. The severe penalty violates the proportionality principle.

Three years in prison of the convicted husband will end up penalising the already aggrieved wife and children too.

In the recent Supreme Court judgement, it never said that triple talaq is to be criminally punished.

Parliament should have passed a law stating that the utterance of the words “talaq, talaq, talaq” would amount to “domestic violence” as defined in the Protection of Women from Domestic Violence Act (PWDVA), 2005.

The PWDVA was conceived as a law that ensures speedy relief — ideally within three months — to an aggrieved woman.

While PWDVA is civil in nature, it has a reasonably stringent penal provision built into it.

Since marriage is a civil contract, the procedures to be followed on its breakdown should also be of civil nature only.

Civil redress mechanisms must ensure that Muslim women are able to negotiate for their rights both within and outside of the marriage.

The All India Muslim Personal Law Board (AIMPLB) presented the SC with the following five justifications for triple talaq.

The wife is given security via triple talaq.

Women get killed when men don’t have an easy divorce.

Obtaining a divorce from courts scandalises women’s character, for men the damage is little.

Obtaining a divorce from courts “deters re-marriage” prospects of men, women.

Triple Talaq is sin, but ‘valid and effective’ form of divorce.

Challenges in banning triple talaq:

Religious organisations see the outlawing of a custom that Shariah has sanctified as an infringement on minority’s religious rights.

The low literacy and lack of awareness about Muslim women rights.

It might be possible that Women will not get support from their parents/relatives during legal proceedings.

The action is a just one that will help stop the pain of Muslim women who have endured years of immediate talaq. However, several clauses, such as the criminalization of Triple Talaq, still require consideration and discussion. In the same vein, actions ought to be done to eradicate depraved customs and prejudices against women in other faiths and in society at large.

Arguments in favour of banning triple talaq:

According to a study, 92% of Muslim women in India wanted the triple talaq to be banned.

It goes against the rights of equality and women’s empowerment. It propagates the dominance of men over women.

It gave men the right to arbitrarily divorce their wives without any valid reason.
New-age technology has given birth to new modes of triple talaq such as through skype, text messages and email.

The ‘triple talaq’ has been abolished in 21 Islamic theocratic countries including Pakistan, Bangladesh, and Indonesia. There is no reason for a democratic and secular India to continue this lopsided practice.

It goes against the constitutional principles of gender equality, secularism, right to life of dignity, etc.

It goes against Article 14 (Right to Equality) and Article 15(1) which states that there shall be no discrimination against any citizen on the basis of gender, race, etc. and this kind of talaq is biased against the interests of women.

The constitution of the country says that it shall strive to bring a uniform civil code for the entire country. Doing away with triple talaq will definitely be a step closer to the constitution-makers’ dream of having a uniform civil code for all citizens.

However, the National Commission of Women says that this matter cannot be linked to uniform civil code. Nevertheless, it should be banned in order to protect the interests of Muslim women.

How Triple Talaq violates fundamental rights of Muslim women

Right to Equality (Article 14):- the practice of triple talaq discriminates against women by allowing husbands the unilateral power to divorce their wives while denying the same right to women. This unequal treatment based on gender goes against the principle of equality under article 14 of the Indian constitution, which guarantees equal protection of the law to all citizens.

Right to life and personal liberty (Article 21):- triple talaq can have severe emotional, psychological, and financial implications on women who are suddenly divorced without their consent. This violates their right to live with dignity and personal liberty, as guaranteed by article 21.

Right to freedom of expression (article 19):- the power to divorce a spouse through triple talaq is exercised through verbal communication. However, this right to expression should be balanced with other fundamental rights. When triple talaq is used to divorce a women without her consent, it can infringe on her fundamental rights.

Right to freedom of religion (article 25):- while individuals have the right to follow their religion and its practices, the practice of triple talaq was found to not be an essential part of Islamic religious practice by the supreme court. Therefore, banning it dose not infringe upon the right to religious freedom guaranteed under Article 25.

Conclusion:-

The fact of the situation is Muslim Men (those who practice Triple Talaq) selectively practice whatever suits their need. This particular category among Muslims violates the injunctions of Islam. They pronounce Triple Talaq without following the commands pertaining to it. The researcher feels that due to the practice of Triple Talaq, Islam is looked down upon by the world as the most anti-gender religion. It is time that this that this perception is changed and they stop using religion as an excuse for their misdemeanors. Any change in this regard is resisted in the most vocal terms as became evident in the wake of the Shah Bano case. In order to protect their identity in a secular state, the minority community is turning towards the revival of Islamicization. The combined political and social situation has put the Muslim woman in a dilemma and she is the ultimate sufferer

Reference:-

1. Dr. Shabnam Khan, 2015, "Talaq : A sociological exposition” A sociological analysis of Talaq amongst Muslim Women of Jaipur, Jaipur : Rawat Publications.